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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,278	01/04/2002	Yoshiharu Omura	771,057	6826

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EXAMINER

SMALLEY, JAMES N

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/038,278

**Applicant(s)**

OMURA, YOSHIHARU

**Examiner**

James N Smalley

**Art Unit**

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the wrinkles being connected together in a radius direction across the upper surface, as claimed in claim 15, must be shown or the feature(s) canceled from the claim(s). Furthermore, the claimed embodiment is not shown. Examiner notes the elliptically-shaped support (19) of fig. 5 is not present in the claimed embodiment of fig. 7, having an auxiliary support in addition to a primary support. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 15 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the

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specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The Specification as originally filed does not sufficiently enable the claim limitation, "said wrinkles being connected together in a radius direction across said upper surface," and the limitation is thus held to comprise new matter. Examiner notes the only figure in the Drawings enabling the wrinkles is figure 4. This drawing only shows the cross-section of a can end, and does not clearly depict how the wrinkles are "connected together" and furthermore how they are connected together in "a radius direction across the upper surface."

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear how the wrinkles are "radially connected" together. Examiner notes fig. 4, whereby it can be seen the wrinkles (33) appear to be radially separated from each other.

#### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cudzik US 3,967,750 in view of Bozek US 3,554,400, in view of Perry US 4,084,721, and in view of Kyo JP 11321862.

Cudzik '750 teaches can having a stay-on tab (45), take out hole defined by score line (33), primary and auxiliary supports (52), and the tab has an inclined end (47).

Cudzik '750 does not teach wrinkles connected together in a radius direction across the upper surface. However, we are taught in col. 4, lines 29-30, ridges (60) and (61) serve to rigidify the top.

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Bozek '400 teaches concentric ribs (31) and (32) which stiffen the upper panel.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the top panel reinforcing ribs of Cudzik '750, providing the ribs taught by Bozek '400, motivated by the benefit of stiffening the top panel to prevent deformation. Examiner notes the ribs of Bozek '400 appear to be similar to those in the Applicant's instant figure 4.

Cudzik '750 further does not teach the first end (46) inclined upward from the upper surface. However an opposite end (47) is inclined, and we are taught in col. 3, lines 37-38, the end (47) can be easily grasped. It would be obvious to add a feature to better enable this benefit.

The English abstract of Kyo '862 teaches it is known to incline a first end (4a) to be pressed and lifting the opposite end to enable a weak person in opening the can.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the tab of Cudzik '750, providing an inclined end at the front of the tab, as taught by Kyo '862, motivated by the benefit of better enabling a weak person to easily grasp the tab and open the can.

Finally, Bozek '400 does not disclose the support having an elliptical or polygonal cross-section. However, the supports (52) of Bozek '400 while creating an imaginary pivot line, also inherently prevent rotation of the tab.

Perry '721 teaches an elliptically shaped head in fig. 45, for preventing rotation of the tab.

It would have been obvious to modify the shape of the head of Cudzik '750, forming the head to an elliptical shape, motivated by the benefit of further preventing rotation of the tab.

Furthermore, Examiner notes an elliptically-shaped head is a mere mechanical equivalent of a circular shaped head. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 11-14 have been considered but are moot in view of the new ground(s) of rejection.

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**Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns

  
NATHAN J. NEWHOUSE  
PRIMARY EXAMINER  
4/4/05